

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**DENMAN KOUNTZE, JR., as  
President and Trustee of the  
Hitchcock Foundation, Naples,  
Florida,**

**Plaintiff,**

**vs.**

**FIRST NATIONAL BANK OF OMAHA,**

**Defendant.**

**CASE NO. 8:04CV615**

**ORDER OF  
DISMISSAL**

This matter is before the Court *sua sponte* having reviewed the status report filed by the Office of the Nebraska Attorney General. (Filing No. 41). This Court was notified of the death of Plaintiff Denman Kountze, Jr., on or about August 31, 2005. Because this matter was prosecuted by Kountze in his representative capacity as president and trustee of the Gilbert M. and Martha H. Hitchcock Foundation, the matter could not be prosecuted by Kountze's personal representative. Given the charitable nature of the Hitchcock Foundation, and pursuant to Neb. Rev. Stat. § 21-1918, the Nebraska Attorney General was given notice of the action and time to review the case and consider whether to file an amended complaint in response to the Court's Memorandum and Order dated August 31, 2005. (Filing No. 29). That review has been completed, and the Nebraska Attorney General has decided not to file an Amended Complaint. Accordingly,

IT IS ORDERED:

1. The Complaint and all claims in this matter are dismissed with prejudice;
2. This matter is terminated for all statistical purposes; and
3. The parties' shall bear their own costs and attorney's fees.

DATED this 19<sup>th</sup> day of December, 2005.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge